UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,270	07/25/2003	Ulfar Erlingsson	2525.0750001	7588

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EXAMINER
HOMAYOUNMEHR, FARID

ART UNIT	PAPER NUMBER
2439	

MAIL DATE	DELIVERY MODE
02/25/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action	10/627,270	ERLINGSSON ET AL.
Before the Filing of an Appeal Brief	Examiner	Art Unit
	Farid Homayounmehr	2439

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>09 February 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Examiner Note: If box 1 is checked, check either box (a) or (b).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>*1-25*</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   _____.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☒ Other: _____.

/Kambiz Zand/
Supervisory Patent Examiner, Art Unit 2434

Farid Homayounmehr
Examiner
Art Unit: 2439

Applicant's argument relative to rejection under section 112 is found persuasive and the rejection is hereby withdrawn.

Applicant's argument relative to rejection under section 103 is found non persuasive, and the rejection is maintained. Following is the response to applicant's argument:

Applicant argues that Shur is directed to a single watermark. However, the cited portion of Shur clearly indicates that the watermark inserted in different portiions of the signal is dependent of a desired percentage of watermarking overhead. It explains that the amount on overhead is related to the amount of watermark information carried by the watermark. Therfore all portions of the signal are NOT receiving the same watermark. The watermark for different portions of the signal is dependent on the spectral coefficients of that portion of the signal, as explained in the cited parts of Shur. This process is similar to applicant's invention, where a stream of watermarks is generated, and then different portions of the signal receives a different watermark based on the generated stream of watermark, but further adjusted and changed based on the portion of the signal (see also Shur Fig 1B). Note further that in Shur col. 7 lines 55 to 67, as part of description of the system depicted in Fig. 1A and 1B, the signal is sliced in time intervals, and the signal in each time interval is processed to generate spectral coefficients, indeces and watermarks. Therfore, Shur teaches different watermarks for different portion of the signal. Moreover, Examiner did not concede that Moskowitz does not teach different watermarks (see last Office action at page 2 section 3). As shown by underlining the word respective, it is the respective index that is not explicitly shown by Moskowitz.

Applicant futher argues that since both Moskowitz and Shur use a single watermark, they won't need an index number to mndex the watermark. However, as shown above, applicant's assertion that Moskowitz and Shur teach only one watermark is incorrect. In addition, Shur Fig. 1A includes item 120, labeled as index selector.

Applicant further argues that Examiner has not shown "each generated watermark comprises a respective index number", however, the rejection at page 6 of the Office action shows that Moskowitz parag. 31 teaches an index in each watermark.

Appliant then cocludes, based on their reasons discussed above that the combination of references does not teach "generating a plurality of watermarks, each of the plurality of watermarks comprising a respective index number and a respective portion of the watermark bits." However, as discussed above, the reasons are not persuasive, and the combination does teach the mentioned feature.

Applicant fuerther argues that the office action relies on Shur for teaching "inserting te plurality of waterrmarks into respective headers of a plurality of outgoing packets." Howrever, the rejection relies on Moskowitz (see page 6) for teaching inserting the watermarks into headers of the packets. The feature of plurality of diferent watermarks with respective index number is taught by Shur as indicated in pages 6 and 7. Accordingly, the combination teaches the mentioned feature. Meaning insertion of a atermark and a index in each packet is from Moskowitz, and generation and use of a different watrmark and its associated (respective) index is shown by Shur.

Applicant further argues that Shur is not concerned with packetized data streams, and that if Shur's method applies prior to packetization, then Shuer's method is not pertinent to the problem of packet watermarking. However, applicant fails to identify any reason that performing Shur's method prior to packetizing, or performing low pass filtering and A/D conversion (see applicant's remarks in page 14), makes his invention not pertinent to packetization. A video system may perfrom filtering and A/D conevrsion prior to packetizing data for transmission in the network. Video signals go through different kinds of processing before they are packetized for transmision, and therefore remain pertinent to packetization.

Applicant then argues that if Shur's method is applied to packetized data, it would affect the control elements of the packet. However, Shurs method could be applied to the payload of the packetized data, extract the indeces and generate the watermarks, and then add the watrmarks and indeces to the packet header. Note further that Moskowitz teaches generation of watermarks and insertion of them into the packet header. Also note that Shur teaches segmenting the input stream and processing the segments to produce watermarks and indeces, as discussed above. Therefore, Shur is pertinent to packetized data (segments).

Applicant further argues that combination of Moskowitz and Shur would require watermarking in Moskowitz to operate on the information content, and that would change the principle of operation of Moskowitz. However, applicant does not state why working with the information content would change Moskowitz'z's principle of operation. As mentioned before, packet systems wotk with packet payload. In addition, Moskowitz paragraph 32 shows that the Moskowitz uses the content of the packet to generate a hash used for watermarking.

Applicant once again argues that in Shur the watermarking information and content are combined together, and therefore at the packetizing stage, the watermark bits and the content bits would be contained in the payload. Applicant provides a Appendix with a diagram depicting that the watermark and content will be combined and then if the combination of watermark and content is packetized, the watermarks will appear in payload, or some packets will not have watrmark data. However, the proposed rejection relies on Moskowitz to put watermarks and indeces in each packet. It is the process of generation of the watermark and the index that is modified based on Shur. Note that, as mentioned before, Shur does teach breaking the input stream into different time segments, and generates a watermark and index for each time segment. Now, if each time segment is simply equivalent to payload content of each Moskowitz packet, the watermark and index for that segment is generted based on Shur, and put in the packet header as suggested by Moskowitz. Terefore, all packets will have the required index and watermark as required by claim requirements.

Applicant's argument regarding allowability of of other claims is based on the same features of claim 1 discussed above.

Applicant also argues states that the Official notice is not supported by documentary evidence, and the technical line of reasoning underlying the official notice is neither clear nor unmistakable. However, applicant fails to even discuss what the Official Notice is about,

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why the the facts stated are not common knowledge, or why the technical line of reasoning is unclear. According to MPEP section 2144.03, subsection C:

C. If Applicant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding With Adequate Evidence

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also Chevenard, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate.

Accordingly, applicant's argument relative to allowability of the claims is found non-persuasive.